Supreme Court U.S.
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NO. 96_____

In The

**SUPREME COURT OF THE UNITED STATES**

October Term, 1996

CARIE MARIE MARTIN,
*Petitioner,*

vs.

ROBERT P. CASEY, Governor;
DOUGLAS K. TOBIN, Director,
Bureau of Driver Licensing,
Dept. Of Transportation

*Respondents,*

**Petition For Writ Of Certiorari**
**To the United States Court Of Appeals**
**For the Third Circuit**

# PETITION FOR WRIT OF CERTIORARI

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29 pp

## QUESTIONS PRESENTED

(1) Whether appellant Martin is required by any law to apply for a security account number other than to receive bernefits.

(2) Whether appellant Martin can be denied any rights or privileges as a result of failing to apply for such number.

(3) Whether a social security account number is necessary in order to work and live in this country.

(4) Whether anyone must give up one right or privilege in order to secure another right or privilege

(5) Whether the Pennsylvania Department of Transportation must provide "other identifiers" in accordance with 75 Pa.C.S. § 1510 (f) for those who do not possess a social security account number.

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## OPINIONS BELOW

The Order of the Court of Appeals for the Third Circuit affirming the judgment of the District Court for the Middle District of Pennsylvania is reprinted in the appendix hereto APPENDIX A at 1a. The Judgment of the District Court is reprinted at APPENDIX B at 3a. The Memorandum of the District Court is reprinted at APPENDIX C at 4a

## JURISDICTIONAL STATEMENT

This petition for certiorari, filed pursuant to 28 U.S.C. § 1254 (1), seeks review of the Third Circuit Court of Appeal's Opinion in this case reported as Case No. 95-7544.

## STATUTORY PROVISIONS

This case simply involves the question of whether any law requires any person to apply for a social security account number absent a request for benefits, and whether a state can compel any person to obtain a social security account number in order to operate a motor vehicle. No such authority was presented.

## STATEMENT OF THE CASE

The record shows that after several letters between appellant Martin, defendants Casey, and Tobin, it was apparent that the Bureau of Driver Licensing, Department of Transportation of the Commonwealth of Pennsylvania (Penn Dot) was adamantly refusing to issue a drivers license absent a social security

account number. The letters prior to the suit and the litigation in the District Court provided ample opportunity for the defendants to either bring forth a law requiring anyone to obtain a social security account number, or any reason why the applicable state law which provided for "other identifiers" was not utilized as a remedy.

## ARGUMENT

### A. Background of the Social Security Act.

The Social Security Act of 1935 was enacted because of the situation described in Helvering v. Davis, 301 US 619 (1937):

> Unemployment spreads from state to state, the hinterland now settled that in pioneer days gave an avenue of escape. Home Bldg. & L. Asso. v. Blaisdell, 290 U. S. 398, 442, 78 L. ed. 413, 431, 54 S. Ct. 231, 88 A.L.R. 1481. Spreading from state to state, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the nation. If this can have been doubtful until now, our ruling today in the case of the Chas. C. Steward Mach. Co. 301 U. S. 548, ante, 1279, 57 S. Ct. 883, 109 A.L.R. 1293, supra, has set the doubt at rest. But the ill is all one or at least not greatly different whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poorhouse as well as from the haunting fear that such a lot awaits them when journey's end is near. Helvering v. Davis, 301 US 619 (1937).

Such was the stated purpose of the social security system at

its inception. Two major arguments were made against the act in 1937, Steward Machine Co. v. Davis, 301 U.S. 548, 57 S.Ct. 883 (1937), and Helvering v. Davis, 301 US 619, 57 S.Ct. 904 (1937). In Stewart Machine, an employer challenged the unemployment tax, and the retirement features were challenged by an employer in Helvering. Both were upheld by this Court since they were deemed to be an excise tax within the taxing clauses of the U.S Constitution. In both cases, the issue of whether there was a requirement for the American people to join such a system was not raised, for the simple reason that there was no such mandatory requirement for anyone to join the system.

**B. Voluntary Nature of Social Security**

Over the years, there was never any suggestion that enrollment in the system was mandatory. The social security act is codefied today at 42 U.S.C., §§ 301-433. Entering the social security system is mandatory, only if you are seeking a benefit. If there was a requirement that every person in this country must join the system, one would expect to find language similar to the following, "Every person over (a certain age) shall submit an application to the Social Security Administration". However, there is no such language contained anywhere in the law. Instead of relying on the statute as enacted by Congress, those who do not volunteer are exposed to a lifetime of coercion. Aside from the drivers license issue, public schools are demanding that school age children provide a number before they may be enrolled in any public school. Hospitals have been known to use unethical tactics to persuade new mothers to obtain numbers for their new born. Colleges and University enrollment demand SS numbers. Public utilities, banks and other entities demand numbers claiming that it is required by law. Most people dutifully follow the orders, assuming that **it is indeed**

required by some law. One must look to the U.S. Constitution to determine if that document grants Congress the power to enact a law **compelling** a domestic American to enroll in a compulsory retirement or benefits program. Such authority **cannot be found in the U.S. Constitution,** therefore, it **cannot be enacted into a Federal law,** and it has not been enacted. This Court clearly ruled on that issue in Railroad Retirement Board, et al., Petitioners, v. Alton Railroad Company, et al., 295 U. S. 330-392. Argued March 13 and 14, 1935. Decided May 6, 1935:

> Provision for free medical attendance and nursing, for clothing, for food, for housing, for the education of children, and a hundred other matters, might with equal propriety be proposed as tending to relieve the employee of mental strain and worry. **Can it fairly be said that the power of Congress to regulate interstate commerce extends to the prescription of any or all of these things**? Is it not apparent that they are really and essentially related solely to the social welfare of the worker, and therefore remote from any regulation of commerce as such? **We think the answer is plain. These matters obviously lie outside the orbit of Congressional power.** Railroad Retirement Board, et al., Petitioners, v. Alton Railroad Company, et al., 295 U. S. 330, p 368, (1935) (emphasis added)

Can the appellant be forced to enter into an agreement Which this Court declared to be outside the orbit of Congressional authority? It would certainly appear that the answer is plain.

**C. Whether Regulations Can Expand a Statute.**

Since there is no statute that imposes a mandatory entry into social security, we look to the regulations for such a

duty. Code of Federal Regulations 20 § 422.103 simply states:

> (b) Applying for a number-
>
> (1) Form SS-5. An individual needing a social security number may apply for one by filing a signed form SS-5, "Application for A Social Security Number Card," at any social security office and submitting the required evidence.

It is to be noted that § 422.103 refers to "an individual needing a social security number may apply for one by filing a signed Form SS-5". However, (b) (2), attempts to bypass that procedure whereas the social Security Administration may enter into an agreement with officials of a State... ... "in assigning social security numbers to newborn children". That regulation reads as:

> **(2) Birth registration document.** SSA may enter into an agreement with officials of a State, including, for this purpose, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and New York City, to establish, as part of the official birth registration process, a procedure to assist SSA in assigning social security numbers to newborn children. Where an agreement is in effect, a parent, as part of the official birth registration process, need not complete a form SS-5 and may request that SSA assign a social security number to the newborn child.

The regulation states that "SSA may enter into an agreement with officials of a State...". It is unfortunate that the child has no part in this agreement. A new mother, "as part of the official birth registration process, need not complete a Form SS-5 and may request that SSA assign a social security number to the newborn child".

This insidious practice takes advantage of the fatigued and weary new mother, who, by merely nodding her head is making a life long agreement for her child, and in fact, may be totally unaware of granting permission for a number. Of course this practice relieves the mother and father of making a rational decision on their own as to whether they wish to enroll their child into the system.

**D. Social Security as a Contract**

As noted in the appellant's brief to the Third Circuit, this Court informed the people in Flemming v. Nestor, 363 US 603, p. 603, 4 L Ed 2d 1435, pp. 1439 in pertinent part:

> The Social Security system may be accurately described as a form of **social insurance**, enacted pursuant to **Congress' power to "spend money in aid of the 'general welfare,'** " Helvering v. Davis, supra (301 US at 640), ... It is apparent that the **noncontractual interest of an employee** covered by the Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on his contractual premium payments. Flemming v. Nestor, 363 US 603, p. 603, 4 L Ed 2d 1435, pp. 1439. (emphasis added)

Unfortunately, by this Court's own words, it is a fact that one could pay into the system for 50 or more years and never realize any benefit. This discussion is necessary to demonstrate that when such knowledge is available to any young person, they have a duty to themselves and their family to fight any attempt to be forced into joining an unproductive financial debacle that was doomed for failure from the start. Obviously, protesting such an organization goes far beyond the drivers license issue.

**E. Statutory Construction.**

The Pennsylvania statute, 75 Pa.C.S. § 1510 (f), states, "The department may require **other identifiers,** including, **but not limited to**, a taxpayer identification number, before issuing the license." Because of those words placed in the law by the legislature, there is no reason for the Department of Transportation to refuse a license in this instance. The legislature **provided a remedy for this exact situation,** and the Department is bound by the content of that law. It must be presumed that the statutes enacted by the legislators for the Commonwealth of Pennsylvania mean what they say and say what they mean. Instead of accepting the statute as it was written, the Court effectively ruled that "other identifiers" could now be struck from the statute and the only identifying numbers permitted would be social security numbers. The District Court's Memorandum quoted FCC v. Beach Communications, Inc., 580 U.S. ___ , 113 S.Ct 2096 (1993), and other cases which concluded that "[t]he state decision-makers need not actually articulate the purpose or rationale supporting the classification; nor does the state have any obligation to produce evidence to sustain the rationality of its decision." In this case, there is no argument that the state must produce evidence to sustain the rationality of its decision. Its decision was stated in 75 Pa.C.S. § 1510 (f), which was enacted by the legislators with the following words, "The department may require **other identifiers,** including, **but not limited to,** a taxpayer identification number, before issuing the license." In areas of social or economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against an equal protection challenge, under the Federal Constitution's Fourteenth Amendment or under the due process clause of the Constitution's Fifth Amendment, if there is any reasonably conceivable state of facts that could provide a rational basis for the classification; where there are plausible reasons for an action by Congress, a court's inquiry is at an end; this standard is the paradigm of judicial

restraint. (Stevens, J., dissented from this holding.) FCC v. Beach Communications, Inc., 508 US ____, 124 L Ed 2d 211, 113 S Ct 2096.

The above case, held that "a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against an equal protection challenge, under the Federal Constitution's Fourteenth Amendment...". Here, an analysis of the FCC v. Beach Communications, Inc., decision favors Martin in that the Pennsylvania statute **provides for a remedy** and the Fourteenth Amendment **upholds a fundamental right.** That fundamental right, is to be free from being forced to attach her name and signature to an application form against her will. Respondents, Pennsylvania Department of Transportation, stated in their Brief in support of Motion for Summary Judgment, Brf. p 8, "... it is also noteworthy that Ms. Martin is required by Federal law to obtain a social security number". Of course, respondents could produce no such law. Their citation of statutes and regulations in their Motion for Summary Judgment were shown to be non-existent. Martin's research clearly demonstrated that the authorities cited as "Federal law", were merely veiled threats that indicated what may happen if you refuse to voluntarily acquire a number. It is to be noted that Penn Dot did not pursue that phantom Federal law in the Third Circuit Court of Appeals, in fact, they didn't even file a Brief with the Third Circuit.

## CONCLUSION

The Privacy Act, referred to in part on page 4 of the Form SS-5, Application for a Social Security Card, states, **"You do not have to give us these facts, but without them we cannot issue you a Social Security number or a card. Without a number, you could lose Social Security**

**benefits in the future and you might not be able to get a job"**. That statement is in direct contrast to the statement from Mr. Vincent Sanudo, Director Office of Public Inquiries, Department of Health & Human Services who stated:

> The Social Security Act **does not require a person to have an SSN to live and work in the United States,** nor does it require an SSN simply for the purpose of having one. However, if someone works without an SSN, we cannot properly credit the earnings for the work performed. (emphasis added)

One statement says, "you might not be able to get a job", and the other states, "does not require a person to have an SSN to live and work in the United States". Both statements came from the same government. Which is correct? The Commonwealth of Pennsylvania takes the position that if they cannot force you to obtain a social security number they will merely forbid you from operating a motor vehicle on the highways of Pennsylvania in violation of health, safety, and welfare related goals. The District Court stated, "Plaintiff's refusal to obtain a social Security number is central to the instant dispute". The Court did not explain why any person would need a reason to refuse to sign an application that was not required by a law. It is presumed that the judges in the District Court and the Third Circuit have full control over their signatures, and likewise, such control may be freely exercised by all others. If the appellant is punished for a refusal to attach her signature to an application that is not required by law, it will show that every freedom contained in our Constitution could be eliminated in the same manner. These matters were thoroughly covered in appellant Martin's pleadings which were basically unopposed in this case. As stated in Martin's Brief to the Third Circuit, Penn Dot is attempting to **accomplish indirectly what it may not accomplish**

**directly.** It is the duty of this Court to prevent this destruction of our freedoms.

Respectfully submitted on this 24 day of October 1996.

Carie Marie Martin
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Manchester, Maryland 21102

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

---

No. 95-7544

---

CARIE MARIE MARTIN,

Appellant

v.

ROBERT P. CASEY, Governor; DOUGLAS K. TOBIN,

Director, Bureau of Driver Licensing, Dept. Of

Transportation

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On Appeal from the United States District court For the

Middle District of Pennsylvania

(D.C. Civil Action No. 94-Cv-00928)

District Judge: Honorable Sylvia H. Rambo, Chief Judge

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Submitted Under Third Circuit LAR 34.1 (a)

July 26, 1996

BEFORE: BECKER, STAPLETON, AND MICHEL, *

Circuit Judges

* Hon. Paul R. Michel, United States Circuit Judge for the Federal Circuit, sitting by designation.

JUDGMENT ORDER

After consideration of the contentions raised by appellant, it is

ORDERED AND ADJUDGED that the judgment of the district court entered September 7, 1995, be and the same is hereby affirmed.

Costs taxed against appellant.

By the Court,

s/_____
Circuit Judge

ATTEST:

s/_____
Chief Deputy Clerk

DATED: AUG - 2 1996

## APPENDIX B

## UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

CARIE MARIE MARTIN,
Plaintiff

JUDGMENT IN A CIVIL CASE

v.

DOUGLAS K. TOBIN,
Defendant

CASE NUMBER: 1:CV-94-0928
J. Rambo

• Jury verdict. This action came before the court for a trial by jury, The issues have been tried and the jury has rendered its verdict.

• Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED
that summary judgment be and is hereby entered in favor of the defendant, Douglas K. Tobin, and against plaintiff, Carie Marie Martin.

FILED
HARRISBURG, PA
SEP 6 1995

MARY E. D'ANDREA, CLERK
Per s/_____
Deputy Clerk

September 6, 1995 Mary E. D'Andrea
Date Clerk

s/_____
(By) Deputy Clerk George T. Gardner

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CARIE MARIE MARTIN, : CIVIL NO. 1: CV-94-0928:
:
Plaintiff, :
:
v. :
:
Douglas K. Tobin, :
:
Defendant :

FILED
HARRISBURG, PA
SEP 6 1995

MARY E. D'ANDREA, CLERK
Per s/_____
Deputy Clerk

MEMORANDUM

Before the court is Defendant's motion for summary judgment filed on June 16, 1995. A brief in opposition to the motion was filed by plaintiff on July 5, 1995. On July 12, 1995, Defendant notified the court that a reply brief would not be filed. As such, the motion for summary judgment is ripe for disposition.

I. Background

It is undisputed that Plaintiff Carie Marie Martin, a resident of the Commonwealth of Pennsylvania, has been unable to obtain a Pennsylvania driver's license because she does not have a social security number. Plaintiff doesnot believe in the Social Security system and intends

never to collect Social Security benefits, therefore, plaintiff has refused to obtain a Social Security number. •

Further, it is undisputed that § 1510 of the Pennsylvania Motor Vehicles code is at the crux of the instant dispute. 75 Pa. Cons. Stat. Ann. § 1510 )Purdon's Supp. 1994). In relevant part, § 1510 provides as follows:

(a) The department shall . . . issue to every qualified applicant a driver's license . . . . Except as provided in subsection (f), an applicant shall include his Social Security number on his license application . . . .

(f) . . . the department shall issue a driver's license to an otherwise eligible person who has no Social Security number if the person submits a waiver obtained from the Federal Government permitting him not to have a Social Security number. The department may require other identifiers, including, but not limited to, a taxpayer identification number, before issuing a license.

75 Pa. Cons. Stat. Ann. § 1510 (a) & (f). The Commonwealth uses social security numbers to identify drivers within their own records, and when receiving information from or sending information to the National Driver Registry and the Commercial Driver License Information System. •

Plaintiff contends that § 1510 is unconstitutional as applied to her because it "has caused the Plaintiff to be deprived of the right to operate a motor vehicle purportedly under Pennsylvania state law, this being a violation of the Plaintiff's civil rights in violation of Title 42 united StatesCode § 1983." (Compl. at ¶ 16.) Further, Plaintiff

contends that enforcement of § 1510 has deprived her of her fifth and fourteenth Amendment rights to equal protection of the law. (Compl. At § 21 (B)).)

Thus, the issue before the court on this motion for summary judgment, is whether § 1510 is unconstitutional as it applies to plaintiff.

II. Legal Standards: Motion for Summary Judgment

When considering a motion for summary judgment, this court is bound by Rule 56 of the Federal Rules of Civil Procedure. In Hankins v. Temple Univ., 829 F.2d 437, 440 (3rd Cir. 1987), the United States Court of Appeals for the Third Circuit discussed the applicable standards for summary judgment:

> Summary judgment may be entered if "the pleadings, deposition(s), answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (c). An issue is "genuine" only if the evidence is such that a reasonable jury could return a verdict for the non moving party, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, [248,] 106 S.Ct. 2505, 2510, 91 L.Ed. 2d 202 (1986); Equimark Comm. Finance Co. v. C.I.T. Financial Serv. Corp., 812 F.2d 141, 144 (cd Cir. 1987). If the evidence is "merely colorable" or "not significantly probative" summary judgment may be granted. Anderson, 106 S. Ct. At 2511; Equimark, 812 F.2d at 144. Where the record, taken as a whole, could not "lead a rational trier of fact to find for the nonmoving party, summary judgment is proper"." Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 106 S.Ct. 1348, 1356, 89 L.Ed. 2d 538 (1986).

Id. Once the moving party has shown an absence of evidence to support the claims of the nonmoving party, the nonmoving party must do more than simply sit back and rest on the allegations of the complaint. Specifically, the nonmoving party must "go beyond the pleadings and her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file' and designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). If the nonmovant bears the burden of persuasion at trial, "the party moving for summary judgment may meet its burden by showing that the evidentiary materials of record, if reduced to admissible evidence, would be insufficient to carry the nonmovant's burden at trial." Chipollini v. Spencer Gifts, Inc., 814 F.2d 893, 896 (3d Cir. 1987), cert. Dismissed, 483 U.S. 1052 (1987).

III. Discussion

The central issues before the court are as follows: (1) whether § 1510 unconstitutionally denies Plaintiff her Fifth and Fourteenth Amendment rights to equal protection of the laws, (2) whether application of the statute violates 42 U.S.C. §§ 1983, 1985, and 1986, and (3) whether Plaintifrf is entitled to an award of attorney's fees pursuant to 42 U.S.C. § 1986. The court will address these issues seriatim.

A. Equal Protection Claim

Before proceeding with its analysis of Plaintiff's equal protection claim, the court will briefly review the components of a properly pleaded equal protection claim. Stated in the most rudimentary fashion, an equal protection challenge arises when laws are applied in such a way as to discriminate against a given class of persons or as to

deprive persons of a fundamental right. The standards employed by a court to evaluate the constitutionality of the challenged action are driven by the classification of the persons alleging the discrimination or of the right being deprived. For example, certain classifications have been found to warrant strict scrutiny review by the court, such as those based upon race, alienage, or national origin. See Graham v. Richardson, 403 U.S. 365, 372 (1971); Korematsu v. United States, 323 U.S. 214, 216 (1944). Strict scrutiny review is also warranted where the challenged action deprives a person of a fundamental right, such as the right to travel. See Dunn v. Blumstein, 405 U.S. 330 (1972). Those classifications and rights not falling within the narrowly defined group warranting strict or intermediate level scrutiny, are evaluated under a rational basis standard. See FCC v. Beach Communications, Inc., ____ U.S. ____ 113 S.Ct. 2096 (1993).

In light of the above-mentioned framework, a plaintiff alleging an equal protection claim must identify the class within which she is a member or the right of which she has been deprived. Plaintiff in the captioned action seems to claim that she has been deprived of her fundamental right to travel because her application for a driver's license has been denied. (See Compl. at ¶ 21A.) Plaintiff has confused the fundamental right to travel with the non-fundamental right to obtain a driver's license. See Sheakley v. Dept. Of Transportation, 513 A.2d 551, 553 (Pa. Commw. Ct. 1986), appeal denied, 527 A.2d 546 (Pa. 1987) (finding operation of motor vehicle on the highways to be a privilege rather than a fundamental right). The court does not agree that Plaintiff has been deprived of her right to travel; rather, she has merely been deprived of the right to personally drive a car as her means of transportation. Because the right at issue is not a fundamental right, the

court will review the constitutionality of a 1510 under the rational basis standard.

"Under rational-basis review, the challenged classification must be upheld 'if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.'" Donatelli v. Mitchell, 2 F. 3d 508, 513 (3d Cir. 1993) (quoting Beach Communications, 113 S.Ct. at 2101). This standard of review requires the court to accord great deference to the decisions made by the statelegislature in enacting the law at issue in the equal protection claim. See Beach Communications, 113 S.Ct. at 2101 (rational basis review is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.") Moreover, "(t)he state decision-makers need not actually articulate the purpose or rationale supporting the classification; nor does the state have any obligation to produce evidence to sustain the rationality of its decision." Donatelli, 2 F.3 at 515 (citing Heller v. Doe, ____ U.S. ____, 113 S.Ct. 2637, 2642 (1993)).

Plaintiff contends that § 1510 infringes upon her right to equal protection of the laws insofar as the statute precludes her from obtaining a Pennsylvania driver's license because she does not have a social security number. The Commonwealth argues that the identifying number is necessary to accomplish a number of health, safety, and welfare related goals. Specifically, Defendant avers as follows:

having a social security number for each licensee assists the Department in verifying the identity of persons so that its records accurately reflect the safety record of Pennsylvania drivers. Those records, in turn, are used to determine whether a license should be issued, revoked or suspended. (Def. Brief in Support at 7.) Defendant also points to the

National Driver Register law, 49 U.S.C.S. § 30301 to § 30308, as further evidence of the propriety of requesting that applicants provide a social security number on their applications. Pursuant to § 30304, states participating in the Registry must, inter alia, report to the registry information regarding persons who are denied licenses, whose licenses are revoked, and who are convicted for motor vehicle offenses. 49 U.S.C.S. § 30304 (a). As part of their filing, states must include "the social security account number if used by the State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number if different from the social security account number. " 49 U.S.C.S. § 30304 (b) (1) (C).

Although it was not required to do so, the Commonwealth has provided the court with ample evidence that a rational basis exists for requesting that applicants for driver's licenses supply the commonwealth with their social security number. accordingly, Plaintiff's equal protection claim must fail. The court will grant Defendant's motion for summary judgment as to Plaintiff's equal protection claim.

B. Civil Rights Claims

In addition to the equal protection claim, Plaintiff has alleged causes of action pursuant to 42 U.S.C. §§ 1983, 1985, 1986, and requested attorney's fees pursuant to § 1988. Plaintiff's civil rights claims are based upon her equal protection Claim. The court has already found that Plaintiff has failed to state a valid equal protection claim. Moreover, the court can find no other alleged rights violation upon which a civil rights claim could be based. • Accordingly, insofar as the civil rights claims must be founded upon an alleged equal protection violation, the

court finds the claims to be without merit. Further, a party is not entitled to attorney's fees unless they are the prevailing party in a civil rights action. Plaintiff cannot prevail on any of her civil rights claims, thus, she is not entitled to an award of attorney's fees pursuant to § 1988. defendant's motion for summary judgment will be granted as to Plaintiff's civil rights claims and request for attorney's fees. [4]

IV. Conclusion

As the court finds Plaintiff's claims to be without merit, and further, finds there to be no disputed material facts, the court will grant Defendant's motion for summary judgment in its entirety. An appropriate order will be issued.

s/

SYLVIA H. RAMBO, Chief Judge
Middle District of Pennsylvania

Dated: September 5, 1995

Footnotes:

1. Plaintiff contends that evidence regarding Plaintiff's reasons for not obtaining a Social Security number is "immaterial and irrelevant and . . . [has] absolutely nothing to do with the issue introduced as evidence to this court. " PP. Brief in Op. at 2.) the court cannot agree. Plaintiff's refusal to obtain a social Security number is central to the instant dispute. If Plaintiff provided the Department of transportation with such a number, she would not have encountered difficulty in obtaining her driver's permit. Further, this evidence is admissible with respect to the

motion for summary judgment. Plaintiff's answers to Defendant's interrogatories contain a list of reasons why she intends not to obtain a social Security number. answers to interrogatories are admissible evidence at summary judgment. See United States v. O'Connell, 890 F. 2d 563, 567 (1st Cir. 1989).-

2. Both the National Driver Registry and the Commercial Driver License Information System are national directories used to improve highway safety by keeping unsafe drivers off of the road.

3. The court has already found that Plaintiff was not deprived of her fundamental right to travel.

4. As the court has found no merit in any of Plaintiff's claims, Plaintiff's request for compensatory and punitive amages is moot. (See Compl. at ¶¶ 21 (a) and 21 (b).)